Canteen Company—Division of TW Services, Inc. *and* Wholesale & Retail Food Distribution Local 63, International Brotherhood of Teamsters, AFL–CIO.[1] Case 31–CA–17691

November 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 25, 1990, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel filed limited exceptions to the judge's decision and a supporting brief.

On January 8, 1992, the Board issued an order remanding pProceeding to the administrative law judge for his consideration of the complaint allegations that the Respondent had withheld a lump-sum payment from its Redlands employees in violation of Section 8(a)(3) and (1) of the Act.[2] The judge had found that the Respondent violated Section 8(a)(1) by announcing that the annual wage review policy had been discontinued and that the employees, should they elect the Union as their bargaining representative, would receive no wage increases or additional benefits ''until a contract is negotiated.'' He did not, however, specifically rule on the 8(a)(3) allegations in the complaint.

On March 18, 1992, the judge issued the attached supplemental decision, concluding that the Respondent has not violated Section 8(a)(3) and (1) of the Act as alleged, and he reaffirmed his original decision and recommended Order.

The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision, the supplemental decision, and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Canteen Company—Division of TW Services, Inc., Redlands, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] Not included in bound volumes.

Raymond Norton, Esq., for the General Counsel.
Susan S. Grover, Esq. (Lillick & McHose), of Los Angeles, California, for the Respondent.
John A. Siequeiros, Esq. (Wohlner, Kaplon, Phillips, Vogel, Shelley & Young), of Encino, California, for the Union.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Los Angeles, California, on December 14 and 15, 1989. The initial charge was filed on May 22, 1989, by Wholesale & Retail Food Distribution Local 63, International Brotherhood of Teamsters AFL–CIO (the Union).

Thereafter, on June 30, 1989, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing in Case 31–CA–17691 alleging a violation by Canteen Company—Division of TW Services, Inc. (Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

Pursuant to a representation petition filed by the Union on May 4, 1989, in Case 31–RC–6578, an election by secret ballot was conducted on June 16, 1989. The tally of ballots reflects that of the approximately 27 eligible employees, 25 cast ballots, of which 12 were cast for the Union, and 13 were cast against the Union. There were no challenged or void ballots. Thereafter, the Union filed timely objections to the election. On July 11, 1989, pursuant to a Report on Objections, order directing hearing, notice of hearing, and order consolidating cases, the objections issue was consolidated by the Regional Director with the unfair labor practice proceeding for the purpose of hearing, ruling, and decision by an administrative law judge.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel, counsel for the Union, and counsel for Respondent.

On the entire record,[1] and based on my observation of the witnesses and considerations of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation, with an office and place of business located in Redlands, California, where it is engaged in providing contract food and vending services. In the course and conduct of its business operations, the Respondent annually purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

It is admitted, and I find, that the Respondent is now, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[1] The Respondent's corrections to the transcript are hereby made a part of the record.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES AND OBJECTIONABLE CONDUCT

A. *The Issue*

The principal issue raised by the pleadings and the Report on Objections is whether the Respondent's announcement of the withholding of a bonus or wage increase prior to the election, and the deferral of such bonus or wage increase until shortly after the election, violated Section 8(a)(1) and (3) of the Act, and constituted conduct requiring the setting aside of the results of the election and the conducting of a rerun election.

B. *The Facts*

On or about May 16, 1987, and April 16, 1988, the Respondent granted bonuses in the amount of $500 for regular full-time employees and in the amount of $250 for regular part-time employees. The Respondent variously refers to such increases as bonuses, lump-sum payments, wage increases, or cost-of-living increases, but the record clearly shows, and the Respondent emphasizes, that however the additional compensation is characterized, it constitutes the employees' wage increase for the year.

On May 4, 1989, the Union filed a petition for an election in the following described unit:

> All full-time and regular part-time route service employees, utility employees, maintenance employees, warehouse employees, and vending attendants employed by the Employer at, or who report to or who work out of, the Employer's location at 505 New Jersey Ave., Redlands, California; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

In mid-May 1989, prior to the time that an election date has been scheduled, the Respondent's district manager, James Whitlock, held several meetings with different groups of unit employees, and read a prepared speech to them. The route service employees, who apparently constitute over 50 percent of the aforementioned unit, were assembled at one of these meetings. Whitlock's speech to these and the other groups of employees is as follows:

> There is going to be an Election conducted by NLRB, an Agency of the Federal Government. This will be a secret ballot election. No date has been set for this election, but I expect a June date.
>
> This is very important for you, your family and the Company. It will determine if you are to be represented by a Union. Election will be by majority vote.
>
> If any of you have signed a Union Card, you do not have to vote for the Union, as it will be a secret ballot and no one will know how you vote.
>
> I am concerned about promises that the Union may have made to you. Union promises are like politican [sic] promises, easy to make, hard to keep.
>
> The only guarantee you will have if the Union is voted in, is that the Company will sit down and bargain in good faith.
>
> But the Company does not have to do anything that it feels is not in its best interest when it bargains with the Union.
>
> Bargaining means starting with a clean slate. Everything you have is on the table and can be negotiated. There are no guarantees as to what you will end up with in negotiations. If anyone has guaranteed you anything, have them put it in writing. They will not do it.
>
> Right now, some of you are wondering where your annual wage increase is. By law, now that an election petition has been filed, I cannot give you any wage increases or change any benefits you currently have.
>
> If you select the Union as your representative, there will be no change in wages or benefits until a contract is negotiated.
>
> Negotiations can be a long drawn out procedure, especially with a First Contract (Quote—L.A. Contract). Nothing will change during this process.
>
> If you vote no for the Union, I can't promise you what will happen as far as wages and benefits because Federal Law forbids my promising you anything as that could be viewed as trying to buy your vote.
>
> I will be talking to you some more about other issues I am concerned about. I want to make sure you have both sides of this story before you make this very important decision.
>
> If you have any questions, I will try to answer them. If I don't know the answers, or if there are legal issues, I will get back to you.

Whitlock testified that during a question-and-answer period following his speech, he was asked by one of the route drivers whether the employees were going to receive their annual bonuses. Whitlock replied that ''Federal law prohibits me from promising you anything that could be viewed as trying to buy your vote.'' Further, he told the employees that ''the contract in L.A. had not been signed and that we would be reviewing wages and compensation once the contract in L.A. had been signed.''

According to Whitlock, his reference to the signing of a contract in Los Angeles was understood by the employees to mean that the Redlands bonuses were dependent on the outcome of current bargaining negotiations which were then taking place in the Los Angeles area between another Teamsters local and a different facility of the Respondent, which contract is viewed as a ''bench mark'' for the increases that the Redlands employees will receive. In fact, Whitlock testified that well before the petition herein was filed, and thereafter, employees who inquired about their anticipated bonus were told by Whitlock and other supervisors that the bonus was dependent upon the terms of the succeeding 3-year Los Angeles contract.

Thus, Whitlock testified that a year earlier, at a breakfast meeting on April 20, 1988, during which he distributed the 1988 bonus checks, he referred to the 1989 wage increase evaluation as follows:

> I specifically stated that nothing would change in Redlands until after the [1989] L.A. contract was signed. . . . that is the procedure we had used in pre-

vious contract talks, and, you know, that was going to be the format in 1989, that we would not change anything until the L.A. contract had signed and we had a chance to review what was being done in L.A.

Respondent's maintenance supervisor, Lon Guest, testified that when the employees under his supervision asked him whether they would be getting a raise in the form of a bonus or a weekly wage increase in 1989, Guest told them that he did not know but that ''like in the past, we'll use [the Los Angeles contract] as a guideline.''

Neil Hulick, Respondent's corporate general manager, testified that the Los Angeles contract set the precedent for wage increases in Redlands.

Route Supervisor Marvin Rhine testified that ''The L.A. contract or the L.A. union contract is always revised yearly, and we base our compensation on that review.''

Several supervisors corroborated Whitlock's testimony regarding the statements Whitlock made about the bonus during the mid-May 1989 question-and-answer period, and about the employees' general knowledge that the Respondent's wage increase policy was tied to the Los Angeles contract.

David Daigle, a former employee, testified that after Whitlock read his prepared speech, he was asked by one of the employees when the employees could expect their bonus check. Whitlock replied that ''we would not be getting the [bonus] checks because of this Union thing and he didn't know whether or not we were going to get them until this Union thing had come to an end, until it was over.'' This reply by Whitlock precipitated a heated discussion among the assembled employees and it was suggested that the employees vote against the Union in order to get their bonus checks. According to Daigle, there was no question that the employees would not be receiving their bonus checks ''until this Union thing was over. And we all needed the bonus checks.'' During this discussion Whitlock was standing behind the desk ''with a kind of Cheshire Cat smile,'' and at no time did Whitlock state or imply that the bonus checks were dependent upon the outcome of the Los Angeles contract negotiations.

Alfred Cromwell, a former employee, testified that in response to the question about the bonus checks, Whitlock replied, ''There will be no pay increase or bonus check until such time this Union dispute is solved.'' Cromwell testified that while Whitlock mentioned something about the Los Angeles contract during the course of his prepared speech, at no time either during the speech or thereafter did Whitlock tell the group of employees that whatever bonus they would be receiving was dependent upon the outcome of the Los Angeles negotiations.

Steven Farley, a current employee, testified that Whitlock did not state or imply that the bonuses could not be paid until the Los Angeles contract had been negotiated.

The election was held on June 16, 1989. The vote was 13 to 12 against the Union. The Los Angeles contract was signed by the parties on June 2, 1989. On June 26, 1989, the Respondent granted the employees a weekly wage increase, retroactive to May 31, 1989, in the total annual amount of $500. The following letter, announcing the wage increase, was distributed to each of the employees:

I want to express my personal thanks to the majority of you who expressed their confidence in Canteen Management by voting NO UNION on June l6th. To those of you who did vote for the union, I want to assure you that there will be no discrimination against you because of your actions, and I can assure you that all employees will be treated in a fair and consistent manner.

Even though the Teamsters lost the election, they have protested the vote claiming that the Company postponed a scheduled yearly wage increase because of the election campaign. THIS IS ABSOLUTELY FALSE. At the time the Teamsters filed their petition, the Company had made no decision on the amount of any wage increase, or the date when it would go into effect. We were waiting for the conclusion of the Company's negotiations in Los Angeles before deciding these increases.

The Teamsters are attempting to convince the NLRB that the Company held up a ''scheduled'' increase to influence your vote. WHY ARE THEY DOING THIS? IN ORDER TO GET A RE-VOTE WITHOUT HAVING TO WAIT ONE YEAR. What really makes me mad is that if the Company had given a wage increase during the election campaign, and the union lost, they probably still would have protested the vote claiming that we gave the increase just to influence you to vote no union.

The legal challenges to the election could go on for months. I do not want to see any employees suffer because of these legal challenges. Therefore, we have decided to give a wage increase retroactive to May 31, 1989, on the following basis:

*Commission Employees: $16.00 per week
*Hourly Employees: 40 cents per hour

In addition, hereafter, the Company will review wages and benefits on May 31st of each year.

Again, I want to thank you for the confidence you have shown in the Canteen Management Team.

Analysis and Conclusions

The record is clear that although the employees anticipated a bonus or wage increase in April or May of 1989 similar to the bonuses granted at about the same time in 1987 and 1988, no specific wage increase was promised to the employees prior to the time the election petition was filed. In mid-May 1989, during Whitlock's speech to the employees about the Union, the employees were told for the first time that because of the filing of the election petition they would no longer be receiving the annual wage increase they had anticipated; and that any annual wage increase which they may otherwise have received would not be granted in the event that a majority of the employees voted for the Union because, as Whitlock said, ''If you select the Union as your representative, there will be no change in wages or benefits until a contract is negotiated.''

In fact, however, the Respondent's policy had always been to use the Los Angeles contract as a ''bench mark'' or standard for adjusting the compensation of the Redlands employees. Indeed, as the evidence proffered by the Respondent abundantly demonstrates, the employees had been made well

aware of this policy on various occasions prior to the advent of the Union.

I do not credit the testimony of Whitlock and those individuals who corroborated his testimony regarding his alleged statement to the assembled employees in mid-May 1989 about the Los Angeles negotiations. It is highly unlikely that Whitlock would have refrained from mentioning a matter of such significant import to the employees during his prepared speech to the employees, and relegate the dissemination of this information to the question-and-answer period thereafter. Thus, I find that Whitlock did not tell the employees that the Respondent would be reviewing the wages and compensation once the Los Angeles contract was signed. In this regard I credit the testimony of employees Daigle, Cromwell, and Foley, each of whom impressed me as a credible witness with an accurate recollection of the event.

Thus it follows that Whitlock, by omitting any reference to the continuation of this policy during his speech to the employees, effectively nullified this policy by advising the employees that any future wage increases were dependent upon the outcome of the election rather than, as the Respondent has demonstrated, upon the outcome of contract negotiations.

I find that the Respondent's policy of using the Los Angeles contract as a benchmark for evaluating the annual wage increases for its Redlands employees had become a well-publicized and consistently applied past practice, to the extent that the Redlands employees had been made fully aware that they could expect the Respondent to evaluate their wages upon the signing of each Los Angeles contract, and annually thereafter. Under the foregoing circumstances, the Respondent was required to continue this past practice subsequent to the filing of the election petition.

In *H.S.M. Machine Works*, 284 NLRB 1482, 1484 (1987), the Board stated as follows:

> An employer is generally required to grant wage increases while a representation petition remains pending as if the petition had never been filed. Where, however, the employer's past practice is haphazard, the employer may lack objective evidence to substantiate its claim that the increases it gave are the same as they would have been in the absence of the petition. Accordingly, the Board has fashioned a limited exception to the employer's general duty to act as if the petition had not been filed: The employer may withhold the increases provided it truthfully tells its employees that it has merely postponed or deferred the increases and that it has done so only to avoid the appearance that it interfered with the election. The purpose of these precautions is to avoid placing the onus for the employer's decision on the union. [Footnote citations omitted.]

In *Uarco, Inc.*, 169 NLRB 1153 (1968), the Board set forth its rationale in a case involving the employer's postponement of expected, but nonspecific, benefits:

> The Employer made clear in its campaign statements, as set forth above, that whether or not its employees were represented by a union, it planned to continue its established practice of adjusting wage rates in early April of each year, pursuant to its annual wage survey, to bring them into conformity with prevailing rates in the area; and that the sole purpose of its announcement postponing the expected adjustments in wage rates and benefits for the employees involved was to avoid the appearance that it sought to interfere with their free choice in any elections which might be directed. In the circumstances, we do not believe that the employees could reasonably have concluded, nor do we conclude, that the Employer's postponement of adjustments in their rates and benefits was intended to influence their decision in the question concerning their representation for purposes of collective bargaining. [Footnote omitted.]

Thus, Board law requires that, as in *Uarco*, where an employer has an established past practice or policy of adjusting wages, the employer may postpone expected adjustments in employees' wages in order to avoid the appearance of election interference provided that it makes clear in its campaign statements that it will continue its established past practices regardless of whether or not its employees elect to be represented by a union. Cf. *Singer Co.*, 199 NLRB 1195 (1972); *The Great Atlantic & Pacific Tea Co.*, 192 NLRB 645 (1971).

The Respondent's conduct herein does not comport with the aforementioned case precedent. Thus, during the course of an antiunion speech, Whitlock in effect advised the employees that the Respondent's annual wage review policy had been discontinued and that the employees, should they elect the Union as their bargaining representative, would receive no wage increases or additional benefits ''until a contract is negotiated.'' By such statements the Respondent caused the employees to believe that any wage increase they may have otherwise received would not be granted because of their union activity. Such conduct, I find, is violative of Section 8(a)(1) of the Act and, moreover, mandates that the election be set aside.[2]

CONCLUSIONS OF LAW

1. The Respondent, Canteen Company—Division of TW Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act as alleged and, by the same conduct, has interfered with the election previously conducted.

THE REMEDY

The Respondent shall be ordered to cease and desist from engaging in the unfair labor practices found herein, and to post an appropriate notice, attached hereto as ''Appendix.''

Based on the foregoing findings of fact, conclusions of law, and the entire record herein, I hereby issue the following recommended[3]

[2] The General Counsel's belated request, in his brief, to amend the complaint by including an allegation that the Respondent's postelection granting of the wage increase is violative of the Act is denied.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, Canteen Company—Division of TW Services, Inc., Relands, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Telling employees that any wage increase they may otherwise have received will no longer be granted to them because of their activity on behalf of the Union.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Redlands, California facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the Union's objection to the election held by the Board in Case 31–RC–6578 be sustained, that the results of said election be set aside, and that the case be remanded to the Regional Director for Region 31 for the purpose of conducting a second election.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees that they will not be entitled to receive or be considered for an annual wage increase if they select the Union as their bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by the National Labor Relations Act.

CANTEEN COMPANY—DIVISION OF TW SERVICES, INC.

SUPPLEMENTAL DECISION

By Order dated January 8, 1992, the Board remanded this matter to me for consideration of two related matters, namely, whether, as alleged in the complaint, Respondent withheld a lump-sum payment from its Redlands employees in violation of Section 8(a)(3) and (1) of the Act; and/or whether it delayed the granting of a wage increase in violation of Section 8(a)(3) and (1) of the Act.

In my initial decision I found that:

> [T]he Respondent's policy of using the Los Angeles contract as a benchmark for evaluating the annual wage increases for its Redlands employees had become a well-publicized and consistently applied past practice, to the extent that the Redlands employees had been made fully aware that they could expect the Respondent to evaluate their wages upon the signing of each Los Angeles contract, and annually thereafter. Under the foregoing circumstances, the Respondent was required to continue this past practice subsequent to the filing of the election petition.

I concluded that:

> [D]uring the course of an antiunion speech, Whitlock [the Respondent's district manager] in effect advised the employees that the Respondent's annual wage review policy had been discontinued and that the employees, should they elect the Union as their bargaining representative, would receive no wage increases or additional benefits ''until a contract is negotiated.'' By such statements the Respondent caused the employees to believe that any wage increase they may have otherwise received would not be granted because of their union activity. Such conduct, I find, is violative of Section 8(a)(1) of the Act and, moreover, mandates that the election be set aside.[1]

The facts, as set forth in my initial decision, show that the Respondent's Los Angeles contract, which was used as a benchmark for evaluating the wage increase for its Redlands employees, was entered into on June 2, 1989. Thereafter, on June 26, 1989, 10 days after the June 16, 1989 representation election, the Respondent granted a wage increase to its Redlands employees, retroactive to May 31, 1989. The an-

[1] The Respondent filed no exceptions to my original decision, and on July 20, 1990, the Board granted the General Counsel's motion to sever and remand representation Case 31–RC–6578, setting aside the election conducted, insofar as the record evidence shows, on on June 16, 1989. While the Board states in its remand order at footnote 1 that the first election was conducted on May 4, 1989, this appears to be an inadvertent error.

nouncement of the wage increase was made on June 26, 1989, by letter, which contained, inter alia, the following:

> At the time the Teamsters filed their petition, the Company had made no decision on the amount of any wage increase, or the date when it would go into effect. We were waiting for the conclusion of the Company's negotiations in Los Angeles before deciding these increases.
>
> . . . .
>
> The legal challenges to the election could go on for months. I do not want to see any employees suffer because of these legal challenges. Therefore, we have decided to give a wage increase retroactive to May 31, 1989, on the following basis:
>
> *Commission Employees: $16.00 per week
> *Hourly Employees: 40 cents per hour
>
> In addition, hereafter, the Company will review wages and benefits on May 31st of each year.

The Respondent did not grant its employees a bonus or lump-sum payment in 1989 as it did in 1987 and 1988. As stated in my initial decision, the Respondent variously refers to increases in employees' compensation as bonuses, lump-sum payments, wage increases, or cost-of-living increases. The credible record evidence shows that the Respondent may elect any of these methods of increasing its employees' compensation, or may elect to grant no increase in compensation; further, it is clear that historically only one increase per year, regardless of how it is characterized, is mutually exclusive of the other types of possible increases. Thus, there is no record evidence that the Respondent has ever given both a bonus and an hourly or weekly wage increase to its employees.

The Los Angeles contract, executed on June 2, 1989, provided for a wage increase retroactive to January 1, 1989; the amount of the increase was of 40 cents per hour, or $16 per week for the employees covered by that contract. The Redlands employees were given the identical wage increase, but it was made retroactive only to May 31, 1989. In 1987 and 1988, bonuses, rather than a wage increase, were given to the Redlands employees on or about May 16 and April 16, respectively. There was no established date for the granting of such bonuses, but the employees had come to expect them within the same general time frame.

As found in my initial decision, but explained more fully herein, the gravamen of the violation of Section 8(a)(1) of the Act was the fact that the Respondent, rather than advising its employees that they would be receiving an increase of some sort when the Los Angeles contract had been signed, unlawfully placed the onus of the delay on the filing of the representation petition and the scheduled election, and caused the employees to believe that, contrary to past practice, they would not be any type of increase upon the signing of the Los Angeles contract. Had the Respondent told its employees that they would be receiving an increase of some sort which would be determined following the signing of the Los Angeles contract, which was in fact the case, I would have found no violation. Further, had the Respondent told its employees that they could expect a wage increase after the election, with the accompanying explanation that the increase was being postponed in order to avoid the appearance that the Respondent sought to interfere with the election, I similarly would have found no violation because, historically, the Respondent did not always grant increases at the same time or in the same amount. Thus, the Respondent violated Section 8(a)(1) of the Act by attempting to make it appear that there would be no increase whatsoever as a result of the advent of the Union, rather than advising its employees of the true reason for delaying the 1989 increase.

James Whitlock, district manager of the Respondent's Redlands facility, testified that although the Los Angeles contract was signed on June 2, 1989, he and other representatives of the Respondent, Neil Hulick, general manager of the Respondent's Compton, California facility and Whitlock's superior, and Harold Taegel, a representative of the corporate office, did not commence their deliberations regarding the amount of the Redlands increase until June 16, 1989, the day of the election. There were ongoing discussions thereafter, and the agreed-upon increase was announced to the employees on June 26, 1989, the very day that the decision was made. When asked why he and the other individual did not meet around the first part of June or shortly thereafter to discuss the Redlands increase, Whitlock explained:

> It is my understanding that for me to enter into negotiations as far as increasing wages and that kind of thing when we were looking at a NLRB election, and that, you know, we felt that it would be viewed as, you know, trying to change the outcome of the election. You know, if we got together on June 1st and decided on June 15th that we were going to give a pay increase and June 16th is the date of the election, you know, I think we would have a problem with that. I think our people would have a problem with that because I think even they would have thought we were trying to buy their votes.

Whitlock said that he did not attempt to contact Hulick or Taegel at any time between the Los Angeles contract settlement date and the election, and agreed that the delay in considering the increase was a ''conscious decision'' on the part of management, because it was believed that to put it into effect prior to the election would have been misconstrued as an unlawful attempt to influence the election. Whitlock said, however, that there also was a problem of ''timing'' involved, as Tagel, who did not testify in this proceeding, may not have been available to discuss the matter.

Neil ''Bud'' Hulick, is general manager of the Compton, California facility, and directs the activities of the Greater Los Angeles Area of the Respondent, including the Redlands facility. Hulick negotiated the Los Angeles contract. He testified that during these negotiations he knew that the Redlands employees would be getting an increase upon the signing of the agreement; but he did not know the form or the amount of the increase, as this could not be known, or even discussed, until after a contract had been reached. Hulick testified that there were no discussions concerning any increase for the Redlands employees until June 16, 1989, ''because we were waiting I think to see what the results of the election were.'' He also testified that, ''The election was a key to any type of activity, obviously. We had settled the contract, and then we had to wait until the election was over.''

Hulick also credibly explained that while the Los Angeles contract is a key factor in the equation, the Redlands employees do not automatically receive the amount or type of increase contained in the Los Angeles contract. Rather, other variable must be considered, including the economic market in which the Redlands facility is located, the profitability of the Redlands facility, and the wages paid by non-union competitors of the Respondent in the Redlands geographic area.

Supplemental Analysis and Conclusions

The record evidence is clear that there is only one yearly increase paid to the Redlands employees, and that, contrary to the apparent contention of the General Counsel, the Redlands employees would not have received both an hourly wage increase and a bonus in 1989. I so find.

It is also clear that, as Hulick credibly testified, the amount or type of increase for the Redlands employees, while dependent upon the increase in the Los Angeles contract, is not necessarily always the same as the wage rates of that contract, as the Redlands facility competes with non-union competitors, and various factors in addition to the Los Angeles wage rates, are weighed prior to determining the yearly increase at the Redlands facility.

It is admitted that the Respondent delayed the implementation of its wage increase for the Redlands employees until after the election. I find that since it took the Respondent's representatives only 10 days to decide upon the type and amount of raise (from June 16 to June 26, 1989), the Respondent would have been able to grant this raise within the fourteen day period between the signing of the Los Angeles contract (June 2) and the date of the election (June 16).

However, I conclude that it was not unlawful for the Respondent to delay the implementation of the raise because, in agreement with Whitlock and Hulick, to grant such a raise shortly before the election would have created the appearance of attempting to influence the results. This is because the Respondent had no usual and customary method of granting increases; the amount and type of the raise was not readily ascertainable, but was dependent upon a subjective evaluation of profitability and the competitive situation in the Redlands geographic area; and the increase in hourly and weekly wages implemented after the signing of the Los Angeles contract differed both in amount[2] and type from the bonuses or lump-sum increases granted the Redlands employees in the 2 preceding years.

Therefore, even though, as set forth in my initial decision, the Respondent has violated Section 8(a)(1) of the Act by making untruthful statements regarding its reasons for delaying the expected increase, I further find that the Respondent did not violate Section 8(a)(3) and (1) of the Act by delaying the increase until after the election. See *H.S.M. Machine Works*, 284 NLRB 1482 (1987); *Uarco, Inc.*, 169 NLRB 1153 (1968).

CONCLUSION OF LAW

The Respondent has not violated Section 8(a)(3) and (1) of the Act as alleged.

ORDER

I reaffirm the conclusions of law, remedy, and order contained in my initial decision in this matter.[3]

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[2] In my initial decision, p. 6, L. 8, I erroneously stated that the total amount of the 1989 wage increase was $500. Rather, it appears that the total yearly amount is approximately $832.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.